IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 478 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINODBHAI HARIPRASAD JOSHI,PROPRIETOR SHREEJI SOUND & DECORA & 1 - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR TS NANAVATI for Applicant(s) : 1 - 2.
MR.A.J. DESAI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 15/09/2006

ORAL JUDGMENT

The applicants-original accused are before this Court praying that,

> “23(A) Call for the record and proceedings in criminal Case No.2934 of 1999 from the Court of the Metropolitan Magistrate, Court No.15, Gheekantha, Ahmedabad including the investigation papers along with the report in FIR I 200 of 1998 of the Maninagar Police Station, Ahmedabad City, Ahmedabad.
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> 23(B) Quash and set aside the orders dated 13.3.2006 passed below application dated 5.7.2000 of the applicant no.1 and the order dtd.21.4.2006 passed below application dated 17.4.2006 of the applicant nos.1 and 2 both passed by the learned Metropolitan Magistrate, Court No.15, Gheekanta, Ahmedabad in Criminal Case No.2934 of 1999, and consequentially be pleased to order discharge of the applicants.”

2. The learned advocate for the petitioners emphatically submitted that the learned Metropolitan Magistrate, Court No.15, Ahmedabad has erred in relying upon an order passed by this Court in Special Criminal Application No.1838 of 2005 dated 28th December 2005. He submitted that the learned Judge has misread the observations of this Court made in para 3 of the said order. He submitted that the learned Judge did not pass an independent order on Discharge Application filed by applicant no.1 on 05.07.2000, which was decided on 13.03.2006 as well as on another Discharge Application, which was filed on 17.04.2006, decided on 21.04.2006.

3. When it is put to the learned advocate as to after the application dated 05.07.2000 was decided by the learned Metropolitan Magistrate, Court No.15, Ahmedabad on 13.03.2006 why the said order was not challenged, the learned advocate instead of giving any acceptable explanation to the same, submitted that applicants no.1 and 2 had filed another combined application on 17.04.2006, which is again rejected by order dated 21.04.2006.

The application dated 05.07.2000, which is Annexure 'B' and application dated 17.04.2006, which is Annexure 'J' are seeking the same relief. When an earlier application dated 05.07.2000 was already rejected there was no reason for him to file yet another application with the only difference that this time both the applicants filed a common application.

4. The fact that the application filed in the year 2000, decided in the year 2006, and the order was not challenged and for no valid, acceptable reason another application was filed after almost a month and it is only after the rejection of this 2nd application, by order dated 21.04.2006 that the matter is brought to this Court. This Criminal Misc. Application was filed on 11.07.2006. On 13.07.2006 permission was sought to

convert this Criminal Misc. Application into Criminal Revision Application, which was granted and hence this Criminal Revision Application is before this Court for consideration.

5. On merits, order dated 13.03.2006 does mention that the learned advocates for both the parties were heard. The application of the applicant-Vinodbhai Hariprasad Joshi was read. The entire record of the case was read and taken into consideration. It is thereafter, that while narrating the facts related to the case, the learned Metropolitan Magistrate has mentioned that the complainant of this case had approached the High Court of Gujarat by filing Special Criminal Application and that the said application was granted by the High Court. In the latter part of the order dated 13.03.2006, the learned Judge, as one of the grounds for not passing an order of discharge, mentions that, 'even the High Court has stated that this case be tried as expeditiously as possible as a Police case'. It is also true that the learned Judge ha mentioned that in view of that instruction the case is to be tried further.

Only because of the mentioning of filing of Special Criminal Application before this Court and the observations made by this Court while disposing of the Special Criminal Application, it cannot be held that the

learned Metropolitan Magistrate did not apply his mind to the merits of the case.

6. In the second order dated 21.04.2006, the learned Metropolitan Magistrate has stated in its order that the learned advocates for both the parties were heard. The entire record of the case was read (taken into consideration). The learned Judge has recorded that the complaint is of the year 1999 and the matter has been lingering since then. The learned Judge while referring to the history of the case has mentioned that Special Criminal Application NO.1838 of 2005 was filed before this Court.

7. From the order dated 21.04.2006, it is clear that the learned Judge has taken into consideration the copies of papers, like statement recorded in the course of Police investigation and the Panchnamas which are supplied to the accused persons. It is at that stage that the charges is framed.

The learned Metropolitan Magistrate has taken into consideration the decision of this Court in the matter of K.C. Saksena, Assistant Collector, Customs Vs. Virbhadrasinhji K. Gohel and another, reported in 1985 (1) GLR 517. This Court [M.B. Shah, J., as he then was)] has laid down the principles with regard to

'discharge of an accused' and 'framing of charge'. The Head Note reads as under:

> "At the stage of framing of charge, **the Magistrate is not required to appreciate the evidence meticulously but he has to form an opinion on the prima facie case**. If he arrives at the conclusion that no case is made out, then he has to discharge the accused. But if he comes to the conclusion that there is ground for presuming that the accused has committed an offence, he has to frame the charge. At this stage secs. 245 and 246 do not require any adjudication to be made about the guilt or otherwise of the accused and the standard of test and judgement which is to be finally applied after recording the evidence regarding the guilt or otherwise of the accused is not exactly to be applied. If the evidence is prima facie sufficient and shows that the ground exists for framing the charge, then he cannot pass an order of discharge and he is required to frame charge." (emphasis supplied)

8. The learned Metropolitan Magistrate has also taken into consideration the judgement and order of this Court

in Criminal Revision Application No.649 of 1999.

9. Taking into consideration the orders passed by the learned Metropolitan Magistrate as a whole it cannot be said that it was only on account of the observations made by this Court in para 3 in order dated 28th December 2005, passed in Special Criminal Application No.1838 of 2005 that the learned Metropolitan Magistrate rejected the Discharge Application. Having found no substance in this petition, the petition is dismissed.

(RAVI R. TRIPATHI, J.)

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